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II. BOOK REVIEWS.

SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY. By various authors. Compiled and Edited by a Committee of the Association of American Law Schools. In three volumes. Volume I. Boston: Little, Brown and Company. 1907. pp. x, 847. 8vo.

As this book is the first attempt in this country to provide a text-book for the study of legal history, it is fitting, at the outset, to speak of its origin, its motive, and its method of construction, before we discuss the book itself.

It is no doubt true that legal history has felt the uplift in methods of general historical study during the past fifty years. As Professor Beale says in one of these select essays, "The impulse given to legal study by the work of Savigny and his school in the last generation spread over the civilized world and profoundly influenced its legal thought. The Italians, the natural lawyers of the world, have increased their power by adopting his principles. In England a small but important school of legal thinkers has followed the historical method, and in the United States it has obtained a powerful hold. The spirit of the age, here too, has supported it. We are living in an age of scientific scholarship. We have abandoned the subjective and deductive philosophy of the middle ages, and we learn from scientific observation and from historical discovery. The newly accepted principles of observation and induction, applied to the law, have given us a generation of legal scholars for the first time since the modern world began, and the work of these scholars has at last made possible the intelligent statement of the principles of law."¹ As Professor Beale was reading his essay at St. Louis in 1904, Professor Wigmore under the same auspices was reading his paper on "The Problems of Today for the History of the Common Law"² in which he inquired, "What are the methods by which the further investigation of our history can be encouraged and its hitherto attained results be made broadly known and influential in the legal profession? Our inquiry may be stated in two questions: (A) How can we get more history written? and (B) How can we make known what is written?" In considering the second question a third was asked: "What can we do to teach the knowledge of history to students of law and that chiefly, of course, in our schools of law?" As a partial answer to his questions, Professor Wigmore proposed the compilation of a bibliography of material in periodicals and treatises dealing with legal history, the publication of articles to be selected from this bibliography, the translations of leading foreign legal histories, and the requirement that legal history be studied in law schools.

In 1905 at the meeting of the Association of American Law Schools he embodied his ideas in a "Memorial for the Promotion of Historical Study and Research," and offered a resolution that the Association appoint a committee to prepare a series of volumes of Select Legal Essays. In the discussion of the memorial Professor Woodward, in the absence of Professor Wigmore, stated the purport of the memorial as follows: "Professor Wigmore has two thoughts in mind. One is to encourage the study of legal history in the law schools. The other is to make the study of jurisprudence, both in and out of the law schools, easier. With those two aims in view, he makes several recommendations in his memorial, but I think there are only three of them that the Association may be expected to consider at this time. The first is that a committee of scholars shall map out a list of topics now most demanding further research, in order that the younger scholars may be thus supplied with intelligent lines for their ambitions to pursue. . . . Then, with reference to the study of historical jurisprudence in law schools, he says that the materials now existing in the English language must be collected from scattered corners and brought together in a series of accessible volumes. It is practically impossible to set a class of students at work on the material in its present form,

¹ 1 Select Essays in Anglo-American Law, 558, 572.

² See 2 Rep. Congress of Arts and Sciences, 350.

because for the purposes of a large body of students multiply entire sets of the periodicals or copies of rare pamphlets would be required. For the purpose of making these materials accessible, a committee should be appointed to make a list and collate those articles, and, if the Association thinks best, to publish a selection of the most valuable articles of jurisprudence that have heretofore been published in different periodicals and text-books."³

As a result of the discussion of Professor Wigmore's memorial the Association appointed a committee consisting of Professor Wigmore, Professor Ernst Freund, and Professor William E. Mikel, "to investigate the practicability of publishing, under the auspices of the Association, translations of foreign works of legal scholarship and works of original research in legal history and bibliography."⁴

This committee reported to the Association at its meeting in 1906. The report had two main points: first, a resolution (which was adopted) that the Association approve the reprinting of select essays and chapters on various topics of Anglo-American legal history, without pecuniary responsibility to the Association, but at the expense and profit of the publisher, and that a committee be appointed to procure a publisher, to select the essays and obtain permission of authors and copyright holders, when necessary, and to edit the selections and, before making the final selection, to obtain from the respective faculties of schools represented a recommendation of the best sixty titles, to guide the committee in its selection; and, second, it contained a preliminary list of articles from which the compilation might be made. The committee appointed to carry the project into effect was composed of the same gentlemen as that which had formulated the plan, and it went about its duty in the same spirit of scholarly thoroughness. An exhaustive and critical examination of the historical material in legal periodicals, treatises, and works of history resulted in the compilation of a preliminary list of one hundred and fifty titles, and this, after being submitted to the faculties of all the law schools comprised in the Association and to other legal scholars, was finally reduced to sixty select titles for publication.

The preliminary list presents the following features. "(1) It is based on a brief survey of practically all the printed material. (2) It includes only the modern scholarly researches of readable interest and of general reference value to students. (3) It does not attempt (with rare exceptions) to include anything from the few professed treatises on the history of the law. (4) It includes essays on almost all the main subjects of the law from corporations to liens, and covers also the general field of sources of the law, law reform in the nineteenth century, and colonial law. (5) It forms substantially a supplement to Pollock and Maitland's *History of English Law*. The selections conform closely to Professor Wigmore's opinion that, in dealing with the history of English private law, all works written before 1881 may be ignored; for, of the one hundred and fifty titles selected, only twelve are dated before 1881, and none is earlier than the letter of Chancellor Kent, dated 1828. It is to be noted, however, that less than half of the articles finally selected for printing in this first volume were in the preliminary list. It has seemed desirable to set forth in some detail the facts connected with the inception of this important undertaking in order that the periodical which has contributed so materially to the contents of the work may preserve in its pages a permanent record of the enlightened and unselfish labors of the scholars to whom we owe it.

In view of the fact that the volume before us comprises only one-third of the material to be embodied in the completed work and that the full list of the selections has not been announced, a criticism of the work as a whole, or even of the introductory book, would be premature. Indeed, this book, consisting of twenty-one titles, grouped in five divisions under the description of "General Surveys," unavoidably presents itself in a somewhat fragmentary aspect. It covers an enormous range in subject-matter as well as in time—from the *Leges Barbarorum* to the Victorian period, from the judicial procedure of Edward I to the expansion and reform of the law in the nineteenth century.

³ 28 Rep. Am. Bar Ass'n, 680 (1905).

⁴ 26 *ibid.* 679, 703.

We seem, therefore, to have rather the *dissecta membra* of legal history than an orderly sequence of events.

It should be said, however, that this defect of the work in no way is due to lack of scholarly judgment or of careful arrangement on the part of the editors. It is hard to see how, under the plan adopted, better selections could have been made or the matter more judiciously presented. But the editors had to take what they could get, and the paucity of material available for their purpose as well as the plan and scope of the work rendered such a result inevitable. It may reasonably be expected that the succeeding volumes will display a greater degree of coherence and solidity, though they too must suffer from the dearth of historical scholarship in our Anglo-American world.

In the meantime the appearance of the distinguished names of Maitland, Pollock, Stubbs, and Holdsworth among the contributors to the first volume demonstrates that the work will offer to the law student the best that our legal scholarship has yet produced in the field of history.

But if the volume under review is not to be taken as, in all respects, a measure of the entire work, one thing at least it makes clear. It is evident that we are to have history and not the materials of historical study; a book for the reader rather than for the serious student. In his report of 1906, previously referred to, Professor Wigmore says: "In short, what is needed is a handy and inexpensive series of select essays which shall do for this part of legal study exactly what the case-book has done for the study of cases." Now, whatever may be "needed" by the student of legal history (and it is not likely that the need will soon be met), is it true that this collection of historical essays, however learned and however readable they may be — and they are both learned and readable — will do for the student in this field what his cases have done for him in his professional study of law? The analogue of the case-book is not the historical essay, which gives in agreeable and persuasive form the results of another's study, but a collection of the raw material to which the essayist himself was compelled to resort, and this raw material is nothing but the cases and statutes in which the history of the law is written. Whether it would be possible to compile and bring within a moderate compass enough material of this sort to equip the student for the study of our legal history is a question which, fortunately, we need not attempt to answer here; but let us entertain no illusions as to the real function of the "Select Essays." They will serve a sufficiently useful purpose in teaching our young men and, happily, some of those who have grown gray in the service of the law, to find delight as well as instruction in the marvelous story of our legal development. N. A.

THE AMERICAN GOVERNMENT, ORGANIZATION AND OFFICIALS, WITH THE DUTIES AND POWERS OF FEDERAL OFFICE-HOLDERS. By H. C. Gauss.

New York: L. R. Hamersley and Company. 1908. pp. xxiii, 871. 8vo.

This book will prove a useful compendium for students and, as well, for men of affairs. It is not a formal treatise on government nor on administrative law, but it is a presentation in a concise manner of the essential facts pertaining to our system of government indexed so as to be easily available to all readers. After a chapter devoted to the principles of the governmental system of the United States the author takes up by chapters the President, Congress, and the Supreme Court of the United States. Then follow chapters devoted to the officers of Congress — the Vice-President and the Speaker of the House, and subordinate officials. Following these is a chapter on the officials of the executive departments, the Secretaries and Assistant Secretaries. Chapter 7 treats in detail of the judiciary and the various functions of the federal and territorial courts. To each also of the principal executive departments a chapter is devoted.

In that chapter relating to the Treasury Department some inaccuracies are noted. For example, in discussing the customs law, the author says (p. 318) that in certain cases collectors of customs may call in merchants to appraise imported goods. This is an error. The old "Merchant Appraiser" system, as it was called, was repealed by the present Customs Administrative Act of 1890. Furthermore the word "protest" is used by the author with reference to